

BRIAN TYSON : CIVIL ACTION
:
v. :
:
JEFFREY BEARD : NO. 06-290

ORDER

AND NOW, this 27th day of August, 2013, upon careful and independent consideration of the petition for writ of habeas corpus, and after review of the Report and Recommendation of Magistrate Judge Arnold C. Rapoport, and the objections to said Report and Recommendation ("R&R"), IT IS HEREBY ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The objections are OVERRULED;
3. This matter is dismissed without an evidentiary hearing;
4. Petitioner's Motion for Summary Judgment (Docket #61), Motion for Correct Application of Rule 56 and/or Entry of Summary Judgment on Threshold Retroactivity Claim (Docket #106), Motion to Deem Summary Judgment Motion Unopposed and for Entry of Summary Judgment (Docket #109) and Motion for Summary Judgment (Docket #123) are DENIED;
5. There is no basis for the issuance of a certificate of appealability.

Since the Magistrate Judge issued his R&R, the petitioner was released on parole on July 29, 2012. The Court notes that this fact does not prevent the petitioner from maintaining his habeas petition. An individual remains in state "custody" and can invoke the federal court's habeas jurisdiction when he is subjected to restraints on liberty other than incarceration. See Jones v. Cunningham, 371 U.S. 236, 242 (1963); Leyva v. Williams, 504 F.3d 357, 363 (3d Cir. 2007). One such situation is when the individual is on parole. Mabry v. Johnson, 467 U.S. 504, 507 n.3 (1984), overruled in part on other grounds by Puckett v. United States, 556 U.S. 129 (2009); Lee v. Stickman, 357 F.3d 338, 342 (3d Cir. 2004).

In February 2012, Magistrate Judge Rapoport issued the ("R&R"), recommending that the petition be dismissed with prejudice. The petitioner asked for numerous extensions to obtain counsel who would file objections on his behalf. He never obtained counsel and filed his own objections to the R&R which the Court has considered, as well as all the other materials.

BY THE COURT:

/s/ Mary A. McLaughlin_____
MARY A. McLAUGHLIN, J.